

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
VARIANCE PERMIT DENIED BY
MASON COUNTY TO JOHN M. DRAKE,

JOHN M. DRAKE,

Appellant,

v.

MASON COUNTY and STATE OF
WASHINGTON, - DEPARTMENT OF
ECOLOGY,

Respondents.

SHB No. 83-4

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the request for review of a denial by Mason County of a variance application, came before the Shorelines Hearings Board, David Akana (presiding), Gayle Rothrock, Chairman, Richard A. O'Neal, Nancy Burnett, and Larry Faulk, on July 20, 1983, in Lacey, Washington.

Appellant was represented by his attorney, Thomas Merrick; respondent County was represented by John Buckwalter, Deputy Prosecuting Attorney. Respondent Department did not appear. Court

1 reporter Nancy A. Miller recorded the proceedings.

2 Having heard the testimony, having examined the exhibits, and
3 having considered the contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant is the co-owner of a mobile home situated on a lot in
7 the plat of Cady's Sunrise Beach along Hood Canal in Mason County.
8 The lot is owned by appellant's father. The property is used by
9 members of that family for recreational purposes.

10 II

11 The undeveloped lot was purchased in 1965. The property was
12 developed starting with the building of a bulkhead, then installation
13 of a water system, septic system, and in 1975, a mobile home.
14 Building permits were obtained for the construction activity.

15 III

16 In order to enjoy the property more, appellant conceived a plan to
17 build a terraced deck. The 17-1/2 foot by 30 foot deck would allow
18 easy access from the mobile home over a steep, uneven slope to about
19 five feet from the bulkhead. The bulkhead is located at the "ordinary
20 high water mark" as that term is used in the Shoreline Management Act
21 and the Mason County Shoreline Master Program.

22 IV

23 In September, 1982, the deck was discussed and planned. Appellant
24 decided that a building permit and a shoreline substantial development
25 permit were not needed for the project. Construction was commenced

26 FINAL FINDINGS OF FACT,
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1 and completed in September, 1982 About 1900 in materials and at
2 least 60 total hours in labor went into the installation of the deck.
3 The value of the deck as completed exceeded \$1,000. The deck is an
4 accessory structure to the mobile home, a recreational residence.

5 V

6 The deck does not obstruct view from any nearby residence. It
7 provides appellant and his relatives with easy access to enjoy the
8 shoreline view from his property.

9 VI

10 In October, 1982, the County discovered the new deck. No permits
11 were found allowing the deck. The deck was also noted to be within 15
12 feet from the ordinary high water mark.

13 VII

14 Thereafter, appellant applied for a shoreline variance permit
15 (Application No 310) from Section 7.20.010(c) of the Master Program.

16 VIII

17 The Master Program locates the deck in an urban environment
18 designation. Section 7.20.010(c) of the Master Program provides:

19 Setbacks - the minimum setback for buildings shall be
20 15 feet from the line of ordinary high water,
21 provided that structures shall not extend beyond the
22 common line of neighboring structures, and new
23 construction shall not substantially reduce the view
24 of the neighboring structures.

25 See also, Section 7.16.080.A.2.

26 Section 7.08 220 defines "structure-"

27 "Structure" means anything constructed, erected, or

1 located on the ground or water, or attached to the
2 ground or to an existing structure, including but not
3 limited to residences, apartments, barns, stores,
offices, factories, sheds, cabins, mobile and
floating homes, and other buildings.

4 Appellant's deck is a "structure" subject to the setback provision
5 of Section 7.20.010(c).

6 Variances are provided for in Section 7 20.020 of the Master
7 Program:

8 Variances deal with specific requirements of this
9 ordinance and the objective is to grant relief when
10 there are practical difficulties or unnecessary
11 hardships in the way of carrying out the strict
12 letter of this ordinance. The property owner must
13 show that if he complies with the provisions, he
14 cannot make any reasonable use of his property. The
fact that he might make a greater profit by using his
property in a manner contrary to the intent of this
ordinance is not a sufficient reason for a variance.
A variance will be granted only after the applicant
can demonstrate the following:

- 15 A. The hardship which serves as a basis for the
granting of a variance is specifically related
16 to the property of the applicant.
- 17 B. The hardship results from the application of the
requirements of the Shoreline Management Act and
18 this ordinance and not from, for example, deed
restrictions or the applicant's own actions.
- 19 C. The variance granted will be in harmony with the
20 general purpose and intent of this ordinance.
- 21 D. Public welfare and interest will be preserved;
22 if more harm will be done to the area by
granting the variance than would be done to the
23 applicant by denying it, the variance will be
denied.

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IA

Appellant asserts that the hardship suffered would include a 10-foot shorter deck on a deck already built; it would also look better where and as it is. The deck would allow appellant to enjoy the property, but appellant's own evidence shows that he can "get along" without a deck.

X

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

To prevail, appellant must show that without the variance, he cannot make any reasonable use of his property. If he cannot do so, the application must be denied. If he can do so, he must also prove that the proposal meets the requirements of Section 7.28.020(A, B, C, and D).

II

Appellant has failed to prove that if he complies with the provisions of the Master Program (i.e., builds behind the 15-foot setback) he cannot make any reasonable use of his property. Thus, the action of Mason County in denying the variance must be affirmed

III

Personal hardship or inconvenience does not constitute sufficient ground for granting a variance. Nor do the facts that the deck has

FINAL FINDINGS OF FACT,
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1 been built, that the deck looks good, and that there would be some
2 loss in removing a portion of the deck, constitute sufficient hardship
3 for meeting the criteria. Appellant's own action of building a
4 portion of deck within the setback has caused whatever hardship that
5 may result to him.

6 IV

7 The variance, if granted, would allow a structure not intended by
8 the Master Program. The cumulative effect from granting the variance,
9 and similar such variances, would also be detrimental to the public
10 welfare and interest as expressed in the Master Program.

11 V

12 The deck is structure appurtenant to a single family residence.
13 As such a structure, a substantial development permit is not required.

14 VI

15 Any Finding of Fact which should be deemed a Conclusion of Law is
16 hereby adopted as such

17 From these Conclusions the Board enters this
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ORDER

The action of Mason County denying variance Application No. 310 is affirmed.

DONE this 29th day of September, 1983.

SHORELINES HEARINGS BOARD

David Akana
DAVID AKANA, Lawyer Member

Gayle Rothrock
GAYLE ROTHROCK, Chairman

See Attached Opinion
LARRY FAULK, Member

Nancy Burnett
NANCY BURNETT, Member

Richard A. O'Neal
RICHARD A. O'NEAL, Member

1 CONCURRING OPINION

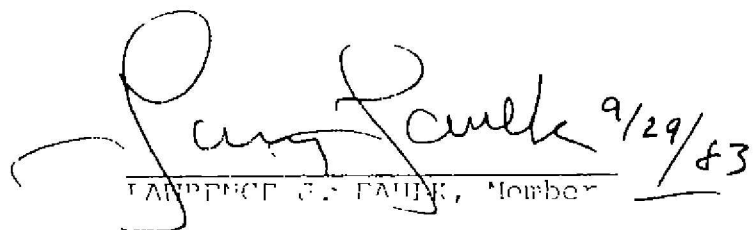
2 I concur with the majority decision but offer the following points
3 that I believe should be considered by the Mason County Commissioners.

4 The deck is compatible with existing structures and uses in the
5 area. The appellants showed there are practical difficulties and
6 unnecessary hardships in carrying out the strict letter of the ordi-
7 nance. (Variance Section OFSMP.) The practical effect of denying
8 the variance is to possibly force the appellants to remove a portion
9 of his deck. This is not a reasonable remedy in my opinion and represents
10 an unnecessary hardship on the appellants.

11 The cumulative impact of granting this variance, where a lot has
12 been partially developed for residential use under proper authority
13 as has this lot, would be small because the area on both sides of
14 this lot are already heavily developed.

15 The Board of County Commissioners should determine a way to
16 locate these kinds of improvements before they are constructed to
17 eliminate the obvious impact on the citizen. Either an inspection
18 program should be instituted or the master program should be changed
19 to allow these kinds of minor improvements within the 15' setback.

20 Although appellant did not meet the strict criteria for granting
21 a variance from a legal point of view, I believe the respondent
22 should consider reversing their prior decision because of the above
23 stated reasons.

 9/29/83
RAYMOND J. FAULK, Member